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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,351	09/28/2001	Franciscus Petrus Maria Mercx	120406-1	3890

7590
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03/07/2003

EXAMINER

KRUER, KEVIN R

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 03/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

10

Office Action Summary

Application No.

09/966,351

Applicant(s)

MERCX ET AL.

Examiner

Kevin R Krueer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 4 and 6-12 is/are pending in the application.
- 4a) Of the above claim(s) 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, and 6-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I, claims 1-11, in Paper No. 7 is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1, 3, 4, and 6-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "non-blooming" is indefinite. Specifically, it is not clear from the specification under what conditions one would determine whether a lubricant was "non-blooming." It is also unclear how one would determine when a lubricant is "blooming" or "non-blooming." If Applicant's contention is that a lubricant is non-blooming when the metallized resin article is subject to aging at temperature of 150-185 Centigrade, then claim 2 fails to further limit claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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2. Claims 1, 3, 4, and 6- 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breitenfellner et al. (US 4,623,562) in view of Cohen (US 4,185,047) for reasons of record.
3. Claims 1, 3, 4, and 6- 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breitenfellner et al. (US 4,623,562) in view of Weaver et al. (US 4,699,942) for reasons of record.
4. Claims 1, 3, 4, 6, 7, and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2000035509A (herein referred to as Polyplastics) in view of Cohen et al. (US 4,185,047) for reasons of record.
5. Claims 1, 3, 4, 6, 7, and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2000035509A (herein referred to as Polyplastics) in view of Weaver et al. (US 4,699,942) for reasons of record.

Response to Arguments

Applicant's arguments filed December 23, 2002 have been fully considered but they are not persuasive.

Applicant argues that the claims of Group II, claim 12, should now be examined with elected claims of Group I because claim 12 has now been amended to agree in scope with claim 1. The examiner respectfully disagrees. The examiner initially notes that election was made without traverse. Furthermore, the method of claim 12 could be utilized to make a materially different product. For example, claim 1 states that the article "consists essentially of" the molding composition and a metallized layer. However, claim 12 is a method wherein an article comprising a metallized layer and a

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molded resin composition. Thus, the method of claim 12 would allow for the production of an article with additional layers that would materially affect the function of the article.

Applicant has not addressed the 35 U.S.C. 112, second paragraph rejection of the phrase “non-blooming.” The rejection is therefore maintained.

Applicant argues that the combination of Breitenfellner in view of Cohen or Weaver is in error because it fails to take into account the invention as a whole. Specifically, Applicant argues that they “unexpectedly found that the article as claimed do not suffer from the defect of blooming.” The examiner initially points out that “blooming” is a property of the resin composition, not the laminate. Thus, the examiner maintains the position that the composition of Cohen necessarily exhibits “non-blooming” since it comprises the claimed components in the claimed relative amounts. Furthermore, one of ordinary skill in the art would expect a higher molecular weight release agent/lubricant to exhibit less blooming than a low molecular weight release agent/lubricant such as those utilized in the comparative examples. Low molecular weight components are known to migrate toward the surface of a molded product. Thus, Applicant’s results are not unexpected.

Applicant further argues that neither Weaver nor Cohen teach that the composition can be metallized. However, the rejection never relied upon either reference for such a teaching. Rather, Breitenfellner, the primary reference, taught the metallization of such substrates. In response to applicant’s arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re*

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Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

With respect to the rejections based upon Polyplastics, Applicant argues that Polyplastics is essentially cumulative with Breitenfellner and therefore is no different from an analytical perspective than the combination of Breitenfellner with Cohen or Weaver. Thus, the arguments above with respect to Breitenfellner with Cohen or Weaver apply to the Polyplastics rejections.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 703-305-0025. The examiner can normally be reached on Monday-Friday from 7:00a.m. to 4:00p.m.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (703) 308-2367. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

K-RK

KRK


Paul Thibodeau
Supervisory Patent Examiner
Technology Center 1700